

CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1895.

No. 873. *427 117.*

THE UNITED STATES, APPELLANT,

VS.

M. SALAMBER.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SECOND CIRCUIT.

FILED FEBRUARY 1, 1896.

(1896.)

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VS.

M. SALAMBIER.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
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1 United States circuit court of appeals for the second circuit.

THE UNITED STATES, APPELLANT, }
 vs. } Suit No. 1215.
 M. SALAMBIER, APPELLEE.

Certificate for instructions.

A judgment or decree of the circuit court of the United States for the southern district of New York having been made and entered on the fourth day of January, 1895, by which it was ordered, adjudged, and decreed that there was no error in certain proceedings before the Board of United States General Appraisers, and that their decision be in all things affirmed, and an appeal having been duly taken from said judgment or decree to this court by the United States, and the cause having come on for argument in this court, a certain question of law arose concerning which this court desires the instruction of the Supreme Court of the United States for its proper decision.

The facts out of which the question arose are as follows:

1. Certain merchandise consisting of sweetened chocolate in the form of small cakes or tablets manufactured from cocoa sweetened with sugar, known commercially as sweetened chocolate, was imported and entered for consumption by the appellee, M. Salambier, from a foreign country into the port of New York on June 23, 1891, which merchandise was classified for customs duties at fifty per cent ad valorem by the collector of the port of New York under the provisions of paragraph 239 of the tariff act of October 1, 1890, and the duty was liquidated accordingly.

2. The importer and appellee protested against this exaction and duly filed the following protest:

"NEW YORK, July 26th, 1891.

HON. JOEL B. ERHARDT, *Collector*.

SIR: I do hereby protest against the rate of 50% assessed on chocolate imported by me, Str. La Bretagne, June 23 / 91. Import entry 96,656.—M. S. No. 52 / 53.

I, claiming that the said goods under existing laws are dutiable at 2 cts. per lb., and the exaction of a higher rate is unjust and illegal, I pay the duty demanded to obtain possession of the goods, and claim to have the amt. unjustly exacted refunded.

Very respectfully,

M. SALAMBIER,
 J. H. DUMONT, *Atty.*"

3. The collector of the port of New York thereupon transmitted the said protest with the invoice and entry to the Board of three General Appraisers on duty at the port of New York, and said Board on December 10, 1892, rendered their decision reversing the decision of the collector, and holding that the said merchandise was dutiable at 2 cents per pound under paragraph 319 of the tariff act of Oct. 1, 1890, and that the importer should not be deprived of his remedy

by reason of having failed to specifically claim classification of the said imported merchandise as a manufacture of cocoa under said paragraph 319.

4. From this decision of the Board of U. S. General Appraisers the United States appealed to the circuit court of the United States for the southern district of New York, by petition, praying for a review of said decision pursuant to section 15 of the act of June 10, 1890, claiming in their petition, among other things, that the said Board were in error in failing to hold that the protest in question was insufficient and invalid, inasmuch as it did not set forth distinctly and specifically the reasons for the importer's objection to the collector's decision as to the rate and amount of duties charged upon the merchandise according to the provisions of law; also in deciding an issue not raised by the protest or arising in the case; also in entertaining said protest and in failing to find the issue of law with the collector of customs; also in reversing the decision of the collector aforesaid in the premises.

5. The said circuit court, upon said petition, ordered the Board of U. S. General Appraisers to return to the circuit court the record and the evidence taken by them, together with a certified statement of the facts involved in the case and their decision thereon, pursuant to section 15 of the act of June 10, 1890, and the said Board of General Appraisers thereafter made such return in conformity to the order of the court.

4 6. The case thereafter came on to be tried upon the record as above set forth and upon the invoice and entry, before Hon. Hoyt H. Wheeler, district judge holding the said circuit court. The circuit court affirmed the decision of the Board of General Appraisers herein and judgment was thereupon made and entered as above set forth, from which judgment the present appeal was taken by the United States to this court.

7. Upon these facts this court desires instruction upon the following question of law for the proper decision of said cause, namely:

Was the protest hereinabove set forth a good and sufficient protest under existing law against the decision of the collector in his assessment of duty upon the appellee's importation of sweetened chocolate, under the tariff act of October 1, 1890?

And to that end this court hereby certifies such question to the Supreme Court of the United States.

WM. J. WALLACE,
E. HENRY LACOMBE,
W. SHIPMAN,

*Judges of the United States Circuit Court of Appeals
for the Second Circuit.*

5 UNITED STATES OF AMERICA,
Second Circuit, ss:

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing certificate in the cause entitled The United States, appellant, vs. M. Salambier, appellee (suit No. 1215), was duly filed and entered of record in my office by order of said court on the 18th day of December, 1895, and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said United States circuit court of appeals for the second circuit, at the city of New York, in the southern district of the State of New York, this 31st day of January, in the year of our Lord one thousand eight hundred and ninety-six and of the Independence of the United States the one hundred and twentieth.

[SEAL.]

JAMES C. REED,

Clerk United States Circuit Court of Appeals for the Second Circuit.

6 (Indorsed:) United States circuit court of appeals, second circuit. The United States, appellant, vs. M. Salambier, appellee. Suit No. 1215. Certificate for instructions. United States circuit court of appeals, second circuit. Filed Dec. 18, 1895. James C. Reed, clerk.

(Indorsement on cover:) Case No. 16169. Term No. 879. The United States, appellant, vs. M. Salambier. U. S. circuit court of appeals, second circuit. Filed February 1, 1896.